

CHRISTIAN F. MURER

IBLA 83-542

Decided December 30, 1983

Appeal from decision of Wyoming State Office, Bureau of Land Management, holding oil and gas lease to have terminated by operation of law. W-30302.

Affirmed.

1. Oil and Gas Leases: Drilling -- Oil and Gas Leases: Extensions

To qualify for a 2-year extension of an oil and gas lease, pursuant to 43 CFR 3107.2-3, it must be shown that "actual drilling operations" were diligently prosecuted on the last day of the lease term, with reference made to subsequent circumstances.

Failure to secure another rig when the first rig is unable to reach potentially productive formations within 60 days after cessation of "actual drilling operations" does not constitute diligent drilling operations even where the lessee uses the first rig on neighboring leases under a prudent drilling program.

APPEARANCES: Christian F. Murer, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Christian F. Murer has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated March 31, 1983, holding oil and gas lease W-30302 to have terminated by operation of law at the end of its primary term on August 31, 1981.

Effective September 1, 1971, a noncompetitive oil and gas lease was issued to Albert C. Smith for a term of 10 years and "so long thereafter as oil or gas is produced in paying quantities," pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976). The lease covers 623.92 acres of land in Natrona County, Wyoming. Caribou Energy, Inc. (Caribou), is the current holder of the oil and gas lease, by virtue of

several mesne assignments. By agreement filed with BLM on June 15, 1979, Caribou assigned to appellant 100 percent of its working and operating rights to "all depths, formations and horizons" penetrated by drilling conducted by appellant. The agreement was approved by BLM on August 26, 1981. By letter dated August 10, 1981, appellant informed BLM that he was "planning to drill a test well * * * to the Shannon Sands at about 3,000 foot depth." In an "Application for Permit to Drill, Deepen, or Plug Back" (Form 9-331C (May 1963)) (APD), dated August 11, 1981, appellant requested permission to drill a gas well to a proposed depth of 3,000 feet, starting on August 28, 1981. The APD was approved by the Acting Casper District Supervisor, Minerals Management Service, on August 31, 1981. On June 7, 1982, appellant submitted various "Sundry Notices and Reports on Wells" (Form 9-331 (December 1973)), which stated with respect to November 1981: "Move balance of equipment off location to #1 Gov't Breene well," and with respect to the period from December 1981 to May 1982: "Waiting on different rig." By letter dated June 16, 1982, appellant informed BLM that:

I commenced the drilling of my test well on the afternoon of August 31, 1981 and drilled to a total depth of 1380. * * * A large water bearing sandstone was encountered at 1320 feet which effectively shut off my air drilling operation. I have drilled and am in the process of completing 4 other shallow oil and gas wells on other leases directly southeast of lease W-30302, using the same air drilling rig and procedures.

In identical decisions dated June 16 and 21, 1982, directed to appellant and Caribou, BLM held oil and gas lease W-30302 to have terminated by operation of law because "no drilling operations were in progress on the lease over the end of its primary term," which would entitle the lease to an extension under 43 CFR 3107.2-3. 43 CFR 3107.2-3, which is derived from section 226(e) of the Mineral Leasing Act, supra, provides that: "Any lease on which actual drilling operations * * * were commenced prior to the end of its primary term and are being diligently prosecuted at that time, shall be extended for 2 years and so long thereafter as oil or gas is produced in paying quantities."

On June 28, 1982, appellant appealed the June 1982 BLM decision to the Board. In his statement of reasons for appeal, appellant contended that actual drilling operations were being conducted "over the end of the primary term and were diligently prosecuted thereafter by the operator, Christian F. Murer" (Statement of Reasons at 1). Appellant explained that the drilling of a well on the land included in oil and gas lease W-30302 was part of a "four well drilling program to explore the Boone Dome prospect," which is a thrust and fault area believed to contain oil and/or gas in shallow Cretaceous reservoirs in the "Shannon and Sharkstooth Sands." Id. at 2. The drilling program was outlined in a "Farmout Agreement," dated August 11, 1981, between appellant and High Summit Oil and Gas, Inc. (Summit), under which Summit agreed to drill four test wells on four neighboring Federal oil

and gas leases between August 31, 1981, and January 1, 1982, starting with lease W-30302. The first well (#1 Gov't Smith) was spudded on the afternoon of August 31, 1981, and the contractor, Murray Drilling Service, was "in the process of drilling the hole, setting conductor pipe and allowing casing cement to set across midnight on August 31, 1981." Id. at 4. Subsequently, approximately 2 miles of road, drill pads, pits, and fences were built and an Ingersoll-Rand T-4 air drilling rig was assembled on the site by McClanahan Well Drilling, Inc. On October 1, 1981, appellant drilled out from under the surface pipe and set 1,080 feet of 7-inch surface pipe. Appellant stated that he "unexpectedly encountered a very porous water sand at 1320 feet" and that the "air hammer bit was unable to perform below a depth of 1380 feet because of excess water." Id. at 5. Appellant explained that he then faced two options:

He could continue drilling to the target formations with the present equipment on the Subject Lease or he could move the rig to another location, explore the Shannon and Sharkstooth Formations at other locations in the Boone Dome prospect, and return at a later date with different equipment to complete the well on the Subject Lease.

Id. Appellant chose the latter option, concluding that to continue drilling, using a conventional rotary bit on the Ingersoll-Rand T-4 air drilling rig, presented "a serious and unacceptable risk of destroying the well and possibly even destroying the target formations," thereby masking any potentially productive zones. Id. Furthermore, appellant stated that: "If the Subject Lease had not been a part of a four well drilling program to test the Shannon or Sharkstooth Formations, Appellant would have immediately procured a rig with a mud system and taken the risk of drilling to the target formations." Id. at 6. Appellant, therefore, suspended drilling on oil and gas lease W-30302 in mid-October 1981 and drilled four additional wells on nearby Federal and state leases: The #1 Government-Breene (Federal lease W-60688), spudded October 28, 1981; the #1 Government-Fee (Federal lease W-58803), spudded November 6, 1981; the #1 Government-Fowler (Federal lease W-58802), spudded November 19, 1981; and the #1 State (State lease 72-2738), spudded April 1982. These wells have tested or produced oil or gas in the Shannon or Sharkstooth formations. Appellant stated that he has expended \$66,000 on the first well and \$613,000 on the four additional wells. Appellant concluded that actual drilling operations were commenced on August 31, 1981, and were being diligently prosecuted at that time and that his diligence is further demonstrated by "his activities exploring the Shannon and Sharkstooth Sands in the immediate area of the Subject Lease during the seven months immediately following the suspension of drilling operations." Id. at 9-10.

In Christian F. Murer, 68 IBLA 356, 357 (1982), the Board vacated the June 1982 BLM decision because "[t]he record before us indicates that BLM has not evaluated the allegations of compliance with 43 CFR 3107.2-3 made by appellant on appeal." We remanded the case to BLM for further consideration of appellant's evidence. By letter dated December 30, 1982, BLM required

appellant to submit "any and all evidence" in support of his allegation of compliance with 43 CFR 3107.2-3. Appellant responded by letter dated January 24, 1983, requesting that BLM proceed with its adjudication "using the data I have already provided."

In its March 1983 decision, BLM concluded that appellant was not entitled to a 2-year extension of oil and gas lease W-30302 because he had failed "to penetrate potentially productive zones" and "to diligently pursue the drilling operation" (Decision at 4). BLM relied on a letter from the Acting Deputy Minerals Manager, North Central Region, BLM, dated March 4, 1983, which recommended that the lease be held to have terminated on August 31, 1981, citing various provisions of the Conservation Division Manual (CDM). In particular, the letter cited CDM 645.6A.3A which provides in relevant part, that, while reasonable delays may be approved, "delays of more than sixty days between cessation of one operation and commencement of another should normally not be considered as diligent operations." See also CDM 645.6A.3C(6). The letter also cited language in CDM 645.6A.3A that "'actual drilling operations' * * * means the actual drilling of a well with drilling equipment to a potential oil or gas horizon." See also CDM 645.6A.3C(2). The letter concluded that "actual drilling operations" were not being diligently pursued on oil and gas lease W-30302, as required by 43 CFR 3107.2-3. BLM agreed with that conclusion because appellant had only drilled to 1,380 feet, penetrating the Mesaverde and Steele Shale formations, which do not contain oil or gas "in the geographic locale of the well," and because appellant had suspended operations in October 1981 and had not resumed them within 60 days thereof (Decision at 2).

In his statement of reasons for appeal, appellant essentially stands by the evidence submitted originally on appeal to the Board. He requests a hearing before an Administrative Law Judge, under 43 CFR 4.415. In a "Request for Hearing," dated April 4, 1983, appellant states that proper consideration of the issue of compliance with 43 CFR 3107.2-3 involves consideration of the following topics: (1) The geology of the Boone Dome prospect; (2) the geologic data available on August 31, 1981, concerning the Boone Dome prospect; (3) the characteristics and composition of the Shannon and Sharkstooth Sands; (4) the alternative means, if any, of exploring the Boone Dome prospect; and (5) the technical and economic data obtained in appellant's drilling program on the Boone Dome prospect.

[1] The applicable regulation, 43 CFR 3107.2-3, provides for a 2-year extension of an oil and gas lease in its primary term where "actual drilling operations * * * were commenced prior to the end of its primary term and are being diligently prosecuted at that time." The record clearly indicates that appellant commenced drilling operations on lease W-30302 prior to August 31, 1981, the end of the primary term of the lease, and that such operations continued over that date. However, we have consistently interpreted the requirement that actual drilling operations be "diligently prosecuted" to require that diligence be tested "not only by the activity in progress at

midnight on the last day, but by what transpires subsequently." D. L. Cook, 20 IBLA 315, 317 (1975), cited in Classic Mining Corp., 37 IBLA 338 (1978). As we said in Classic Mining Corp., supra at 340:

If there was only one critical moment, the lessee who drilled solely to obtain the extension might be able to sustain the appearance of diligence at that time and would be granted an extension. This would thwart the purpose of the regulation. See Thelma M. Holbrook, 75 I.D. 329 (1968). Thus, drilling on the last day of the lease term must be followed "by a showing that the operation was thereafter expeditiously carried forward." (Emphasis added.) D. L. Cook, supra at 317.

As a standard for determining whether actual drilling operations have been expeditiously carried forward, the Conservation Division, Geological Survey (now BLM), provided for a 60-day rule. This rule, which was adopted as a matter of practice, was taken from language in the CDM that after a "small rig [is used] to spud and set surface pipe, prior to the lease expiration date" a "large or full-size rig" must be put into operation on the site "normally within thirty days" of that date and "must continue diligent drilling operations on the hole until a potential oil and gas formation is reached." CDM 645.6A.3C(2). ^{1/} In Classic Mining Corp., supra at 341, we quoted from the oil and gas supervisor, northern Rocky Mountain area, that: "Since 'normally' is not definable, this office has consistently permitted up to a maximum of 60 days if warranted." See CDM 645.6A.3C(6). We concluded in that case that failure to engage in actual drilling operations "which exceeded the 60-day time limit fixed by Survey, cannot be considered to be diligent drilling operations" within the meaning of 43 CFR 3107.2-3, and would not entitle a lease to a 2-year extension.

The 60-day rule has likewise been applied by BLM in the present case. The record indicates that appellant failed to conduct drilling operations on lease W-30302 for a period of time far exceeding 60 days. Appellant has offered no evidence that drilling operations were conducted at any time between October 1981 and May 1982. Rather, appellant failed to bring another rig onto the lease site within 60 days, when the first rig was unable to reach the potentially productive oil and gas formations, which were expressly targeted in its APD. For this reason alone, BLM properly held that lease W-30302 was not entitled to a 2-year extension under 43 CFR 3107.2-3 and, thus, terminated by operation of law on August 31, 1981.

^{1/} In his March 1983 letter recommending that lease W-30302 be held to have terminated, the Acting Deputy Minerals Manager cited language in CDM 645.6A.3A as the basis of the 60-day rule. This citation is incorrect in the context of the question of diligent drilling operations at the end of a lease's primary term, under section 223(e) of the Mineral Leasing Act, supra. As we said in Classic Mining Corp., supra at 341 n.2, CDM 645.6A.3A relates to the question of diligent operations upon the cessation of production "under section 226(f)" of the Mineral Leasing Act, supra.

Appellant contends that his diligent drilling operations on neighboring Federal and state leases is sufficient compliance with 43 CFR 3107.2-3. We do not doubt that appellant acted prudently by moving the Ingersoll-Rand T-4 air drilling rig, which presumably was under contract, off lease W-30302 and utilizing it on the other leases included in the Boone Dome prospect. However, there is no evidence that appellant could not have brought another rig onto the site which was more adapted to the porous sands encountered by the first rig. In any case, drilling operations undertaken on neighboring leases will not suffice to constitute actual drilling operations within the meaning of 43 CFR 3107.2-3. Such operations must be conducted "on" the lease for which a 2-year extension is sought. 43 CFR 3107.2-3.

Appellant has requested a hearing in this case. A hearing will only be granted where there is a disputed question of fact and an appellant alleges facts which, if proved, would entitle him to the relief sought. Paul N. Temple, 69 IBLA 54 (1982); John J. Schnabel, 50 IBLA 201 (1980). We can discern no disputed question of fact which is germane to this case. Appellant offers to present evidence with respect to the economics, techniques, and potential productivity of drilling for oil and gas in the Boone Dome prospect. However, these topics have no bearing on the crucial fact in this case under 43 CFR 3107.2-3, i.e., the delay in resumption of drilling operations subsequent to October 1981. Where appellant has alleged no facts which bear on this matter, the request for a hearing must be denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge

